

**National Electoral Commission of the United Republic of Tanzania**

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**BY EMAIL ONLY**

19 August 2020

**Urgent Action Appeal – Tundu Lissu, United Republic of Tanzania**

Honourable Commissioners,

This law firm represents Mr. Tundu Lissu, a citizen of Tanzania and the current leader and nominated presidential candidate of Tanzania’s main opposition party, CHADEMA. As you may already know, on 3 August 2020, Mr. Lissu was formally nominated by his party CHADEMA as the official candidate to run for the forthcoming General Elections in October 2020.

With this letter, we draw your attention to the ongoing threats to Mr. Lissu and the history of the intimidation of him by Tanzanian government officials. We also seek to notify you of our intention to hold accountable all public servants in the current administration of the Government of Tanzania with regard to any restrictions or limitation to Mr. Lissu’s ability to campaign for the presidency of the United Republic of Tanzania in the forthcoming nomination process on 26 August 2020. We urge the National Electoral Commission (“the **NEC**”) to act with the strictest respect for its duties and obligations under Tanzanian law including but not limited to the Constitution of the United Republic of Tanzania (“the **Constitution**”) and the National Elections Act (“the **Act**”). We are hopeful that the NEC will act fairly, independently, and with full respect for Tanzanian and international law such that further action will not be necessary.

As you are likely aware Mr. Lissu returned to Tanzania in late July 2020. Since his return to Tanzania, Mr. Lissu has received numerous credible threats to his life and person, including threats of arrest from government officials and threats of murder through poisoning. On Thursday night August 13th, the CHADEMA headquarters in Arusha was firebombed and, a few hours later, the convoy in which Mr. Lissu was travelling in was attacked by stone throwing bandits while parked at the constituency office of CHADEMA’s Chairman, Freeman Mbowe. There were a dozen police officers in two vehicles in the surrounding areas who took no steps to prevent the attack. The presence of law enforcement officials combined with their inaction to stop this potentially deadly attack is strongly suggestive of government involvement or, at least, acquiescence in the harassment and threats to Mr. Lissu. As with the 2017 assassination attempt on Mr. Lissu, we are deeply concerned about what appear to be coordinated violent

attacks on our client and CHADEMA party officials. These on-going attacks on Mr. Lissu raise the urgency of our request to the NEC to ensure the independence and impartiality of all processes and determinations related to the October General Election.

## Background

Unfortunately, the history of elections in Tanzania demonstrates a grave and concerning pattern of behaviour by public authorities towards opposition political parties and opposition candidates. In light of that background, the actions of the NEC in the current election cycle is critically important and will be subject to heightened scrutiny. We therefore bring to your attention the steps that should be taken into account to ensure there are no unlawful and unconstitutional actions that seek to limit or restrict Mr. Lissu's ability to campaign in the forthcoming elections.

It is worth noting the problematic history of recent elections in Tanzania. During 2015's General Elections, the police detained 40 volunteers who were monitoring the vote counting process and fired tear gas at a crowd of supporters in Zanzibar.<sup>1</sup> On 29 October 2015, the media devoted significant coverage to police raids against a number of CHADEMA vote centres.<sup>2</sup> The Tanzanian Government later charged eight CHADEMA volunteers with publishing false election results under the Cyber Crimes Act,<sup>3</sup> despite the fact that there were merely published accurate election data that did not support the government's preferred result.<sup>4</sup>

In November 2019, the ruling CCM party deployed a range of tactics to subvert the local elections. It blocked 96% of the opposition parties' candidates from contesting seats through disqualifications, while more than 90% of the ruling CCM candidates were approved,<sup>5</sup> leaving it to win 99.77% of the votes according to official results. Such a high disqualification rate for opposition parties is strongly indicative of a lack of an impartial candidate vetting process and raises deep doubts about the independence and fairness of the election more generally. Following Mr. Lissu's recovery from an assassination attempt in Tanzania, in December 2019 and January 2020, the national leadership of CHADEMA wrote to the heads of the law enforcement and security institutions of the government of Tanzania requesting personal protection for Mr. Lissu upon his return home. The requests remained unacknowledged and

<sup>1</sup> Mwakideu, C. (2015). Fraud claims in Tanzania as vote counting. *Dw.com*, 26 October. <https://www.dw.com/en/fraud-claims-in-tanzania-as-vote-counting-continues/a-18806661>

<sup>2</sup> Collord, M. (2015). Tanzania's ruling party wins election (again), but poll is annulled in Zanzibar. *Theconversation.com*, 29 October. <https://theconversation.com/tanzanias-ruling-party-wins-election-again-but-poll-is-annulled-in-zanzibar-49934>

<sup>3</sup> John, R. & Lamtey, G. (2015). Chadema volunteers charged with publishing wrong results. *Thecitizen.co.tz*, 28 October. <https://www.thecitizen.co.tz/tanzaniadecides/Chadema-volunteers-charged-with-publishing-wrong-results/-/2926962/2933186/-/6kxx4e/-/index.html>

<sup>4</sup> Allison, S. (2015). Tanzania election winner declared despite vote-rigging claims. *Theguardian.com*, 29 October. <https://www.theguardian.com/global-development/2015/oct/29/tanzania-announces-election-winner-amid-claims-of-vote-rigging>

<sup>5</sup> Al Jazeera. (2019). Tanzania to hold local elections amid opposition boycott, 23 November. <https://www.aljazeera.com/news/2019/11/tanzania-hold-local-elections-opposition-boycott-191123052345878.html>

unanswered to this day, leaving him at risk of further attacks by or with the acquiescence of the government.

A mere three days after Mr. Lissu's return to Tanzania, he was summoned to court on one of the spurious sedition cases against him. On 3 August 2020, Mr. Lissu was formally nominated by his party CHADEMA as the official candidate to run for the next General Elections in Tanzania. On the same day, the Tanzanian authorities passed a new legislation making the organisation, planning or even support of any form of demonstration online illegal. It is not a coincidence that this decision occurred on the same day Mr. Lissu's candidacy became official, which leads to the reasonable assumption that the Tanzanian government seeks to restrict political participation by opposition political parties ahead of the October elections and avoid any public criticism online. These new restrictions add to existing limitations on public demonstrations and a continued reluctance of government authorities to issue permits for demonstrations. This new law is yet another example of President Magufuli's political agenda to violate fundamental rights and freedoms.

Furthermore, as a presidential candidate, Mr. Lissu is entitled under Tanzanian law to statutory security benefits to ensure his personal safety throughout the campaign cycle.<sup>6</sup> To date, the government has not provided him with the legally mandated security protections, despite numerous requests. Since his return, Mr. Lissu has received repeated threats, including threats of arrest by government officials against him and members of his party. He has also been subject to threats of murder through poisoning. Despite Mr. Lissu's repeated efforts to address these threats publicly, no security has been provided by the government. Instead, the National Police Chief has gone on record to state that the police will 'get' Mr. Lissu. In so doing, the government has endangered Mr. Lissu's life and wellbeing, has failed to meet its obligations under Tanzanian law, and has undermined his internationally protected human rights to security of person.

While we hope that Mr. Lissu is granted a fair and due process for the validation of his nomination on 26 August 2020, the brazen impunity by the current leadership in its treatment of legitimate democratic opposition leaders has us concerned that President Magufuli and Tanzanian government authorities will use governmental enforcement agencies and more repressive laws to silence critics ahead of the October General Elections.

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<sup>6</sup> Part VII of The Election Expenses Act, Chapter 278. Section 29 (1): "*the Government shall, for the purpose of maintaining peace and security during nomination process, election campaign and election, deploy the police force to provide such security- (a) to any place where nomination process or election campaign is conducted by a political party; (b) in respect of Presidential candidates; and [...] (2) Expenses for deploying the police force personnel for the purpose of this section shall be borne out by the Government. [emphasis added]*"

UNDP (2016). Compendium of Electoral Laws and Regulations of Tanzania.

<https://www.tz.undp.org/content/dam/tanzania/docs/Success%20Stories/Good%20Governance/Compendium%20of%20Electoral%20Laws%20and%20Regulations%20Tanzania%202016.docx.pdf>

## The NEC must narrowly and fairly apply the Act

In the runup to the October 2020 elections, the NEC must independently, impartially, and fairly apply the Act. Recent elections, particularly that in 2015, highlight the problematic application of the Act in the past. In 2020, the NEC must follow the guidance provided by the European Union Final report on 2015 General Elections: “*Serious efforts should be made to limit the involvement of governmental administrative structures in the organisation and implementation of the electoral process. [...] The appointment of NEC commissioners should be revised in order to increase confidence in the NEC's independence among all stakeholders.*”<sup>7</sup>

More specifically, the NEC must narrowly apply the Act in determining the eligibility of candidates in 2020. In Chapter III of the Act at Articles 30 and 31 the NEC is given a very specific and narrow set of requirements for determining candidate eligibility. Those articles provide the following:

*“30. Whenever a Presidential election is to be held, each registered political party intending to participate in the Presidential election shall submit to the Commission, the name of a Presidential candidate and the name of the candidate for the office of the Vice-President of that political party.*

*31. In order to be validly nominated to stand as a Presidential candidate, a person must be nominated in writing, by not less than two hundred nominators who are registered voters for the purposes of elections under this Act from each of at least ten regions of the United Republic, out of which at least two regions are in Tanzania Zanzibar.”*

We note that the Act provides only two requirements for a presidential candidate to be validly nominated. Those criteria are the following:

1. The nomination “**in writing, by not less than two hundred nominators who are registered voters for the purpose of elections under this Act from each of at least ten regions of the United Republic, out of which at least two regions are in Tanzania Zanzibar.**” (Article 31 and 32 of the Act); and
2. The provision of a deposit at the time of delivering nomination (Article 33 of the Act).

Mr. Lissu has been duly elected by his party members and has met these two criteria. The relevant law does not provide discretion for the addition of other requirements or to reject a nomination for other reasons. We therefore expect the NEC to validate Mr. Lissu’s candidacy following a fair and due process in the strict respect of the provisions of the law.

Such an impartial and narrow reading of the law is also required by a range of international obligations binding on Tanzania, including Articles 25 and 26 of the International Covenant on Civil and Political Rights and Articles 13 and 26 of the African Charter on Human and

<sup>7</sup> European Union Election Observation Mission. (2015). United Republic of Tanzania, Final Report General Elections 2015. Eods.eu. [http://www.eods.eu/library/eu-eom-tz-2015-fr\\_en.pdf](http://www.eods.eu/library/eu-eom-tz-2015-fr_en.pdf)

People's Rights. These articles impose binding obligations on Tanzania to guarantee to every citizen "without unreasonable restriction" to "take part in public affairs" and to "be elected at genuine periodic elections."<sup>8</sup> So too, Mr. Lissu is "entitled without any discrimination to the equal protection of the law" without "discrimination" based on "political or other opinion."<sup>9</sup> Any action by the NEC to deny Mr. Lissu's candidacy for the presidency would therefore constitute a clear violation of Tanzania's international legal obligations.

### **Mr. Lissu has not breached the Public Leadership Code of Ethics Act**

It is important to recognize and affirm that Mr. Lissu has not breached the Public Leadership Code of Ethics Act and cannot be denied the right to run for the presidency based on an alleged breach thereof. Following the criteria provided by Article 39 of the Tanzanian Constitution<sup>10</sup>, we underline that Mr. Lissu has never been convicted of any criminal offenses. Mr. Lissu has never been convicted of any criminal offenses and has not, therefore, breached the Public Leadership Code of Ethics Act. The criminal allegations against Mr. Lissu remain merely unfounded allegations. Furthermore, we consider these charges to be lacking any basis in law, as they are politically motivated and in violation of Mr. Lissu's rights to freedoms of political association, expression and opinion, as well as to take part in public affairs.

Moreover, Mr. Lissu is guaranteed a presumption of innocence under Tanzanian and international law. That presumption of innocence must apply to any interpretation of the Public Leadership Code of Ethics Act. Any determination otherwise without a free and fair trial that meets internationally mandated standards pursuant to Article 9 of the International Covenant on Civil and Political Rights and Article 7 of the African Charter on Human and People's Rights would be a violation of international law.

### **Conclusion:**

Given the foregoing circumstances, we request the NEC independently and impartially undertakes its legal duties without any political motivation or influence. It is the NEC's legal obligation to guarantee a fair election process that conforms with Tanzanian law, international human rights obligations, and internationally accepted standards for free and fair elections. The interpretation and application of the National Election Law consistent with those principles will ensure the peaceful nomination and confirmation of Mr. Lissu's presidential candidacy for the next General Elections in Tanzania.

<sup>8</sup> International Covenant on Civil and Political Rights, Art. 25.

<sup>9</sup> International Covenant on Civil and Political Rights, Art. 26.

<sup>10</sup> Article 39 of the Tanzanian Constitution: "*A person shall not be entitled to be elected to hold the office of President of the United Republic save only if:*

- *(a) he is a citizen of the United Republic by birth in accordance with the citizenship law;*
- *(b) he has attained the age of forty years;*
- *(c) he is a member of, and a candidate nominated by, a political party;*
- *(d) he is qualified to be a Member of Parliament or a Member of the House of Representatives;*
- *(e) within the period of five years before the General Elections, he has not been convicted by any court for any offence relating to evasion to pay any tax due to the Government."*

Mr. Lissu has previously seen his rights to freedom of political association, opinion, expression under both Tanzanian and international law repeatedly violated. It is the NEC's solemn responsibility to ensure that Mr. Lissu's rights under Tanzanian law as well as under the International Covenant on Civil and Political Rights and the African Charter on Human Rights and Fundamental Freedoms, to which Tanzania is a State Party, are protected.

Should the NEC fail in these responsibilities and not act in an independent and impartial manner, consistent with both domestic and international law, there are potential consequences for the NEC and its individual members. Should any violations of the rules set in Tanzanian law occur or should the NEC's process result in the violation of Tanzania's international legal obligations, it is our intent to hold the members of the NEC personally accountable before all relevant local, regional and multilateral bodies. Our firm is prepared to take serious legal action before all domestic and international tribunals and authorities in this regard. Such actions would include, but are not limited to, mechanisms for ensuring the respect by Tanzania of its domestic and international obligations to protect human rights, potential investigations by the United Nations Special Rapporteur on the Promotion and Protection of the Right to Freedom of Opinion and Expression, the United Nations Special Rapporteur on the Rights to Freedom of Peaceful Assembly and Association, the United Nations Special Rapporteur on the Independence of Judges and Lawyers, as well as possible claims before the African Court of Human and Peoples' Rights. We are also prepared to lobby the government of the United States of America to impose sanctions pursuant to the Global Magnitsky Act and the government of the United Kingdom to do so pursuant to the Global Human Rights Sanctions Regulations 2020.

It is, of course, our hope and expectation that such actions will not be necessary. We look to the NEC to operate independently and impartially, to undertake a narrow and proper reading of the Act, and to confirm the candidacy of Mr. Lissu for the office of the president in 2020 General Elections. We trust the authorities in Tanzania will respect Mr. Lissu's rights and not impede him from exercising his rights in seeking election to the presidency.

Sincerely,

**Robert R. Amsterdam**



**Founding Partner, Amsterdam & Partners LLP**